

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

ROBERT HOLMAN,)	
)	
Plaintiff,)	
)	
v.)	No. 1:21-cv-01085
)	
THOMAS J. VILSACK, in his official)	JUDGE ANDERSON
capacity as Secretary of the United States)	
Department of Agriculture, and)	MAGISTRATE JUDGE YORK
)	
ZACH DUCHENEAUX, in his official)	
capacity as Administrator of the Farm Service)	
Agency,)	
)	
Defendants.)	

MOTION FOR PRELIMINARY INJUNCTION

Under Fed. R. Civ. P. 57 and 65(a), Plaintiff respectfully requests this Honorable Court issue a preliminary injunction for the reasons set forth in the accompanying memorandum of facts and law. This is Plaintiff's First Application for Extraordinary Relief.

Plaintiff related in his complaint that the government is just beginning to implement an unconstitutional and *ultra vires* farm loan forgiveness scheme that is explicitly race-based. This is unconstitutional and should be immediately enjoined. "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality opinion). Plaintiff will be able to demonstrate a strong likelihood of success on the merits. Section 1005 of the American Rescue Plan Act of 2021 (ARPA) provides loan forgiveness to farmers based on their race. "Government policies that classify people by race are presumptively invalid." *Vitolo v. Guzman*, -- F.3d --, 2021 U.S. App.

LEXIS 16101, at *11 (6th Cir. May 27, 2021). Indeed, because Section 1005 is race-based, it will be the government's burden to clear strict scrutiny. "This is a very demanding standard, which few programs will survive." *Id.* Plaintiff faces both immediate and irreparable harm as will the general public.

Plaintiff requests a hearing on this motion because it would be helpful and necessary. Plaintiff requests a hearing at the earliest possible time.

Dated: June 6, 2021

Respectfully submitted,

s/ B. H. Boucek
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Counsel for Plaintiff

CERTIFICATE OF CONSULTATION

I hereby certify that on the parties are unable to reach an accord as to all issues. On June 2, 2021, I consulted with Joseph Murphy, Acting United States Attorney for the Western District of Tennessee by phone at which time he indicated that he would oppose the relief requested in the motion. Plaintiff will also serve this motion upon the attorneys below who have represented the government in challenges to Section 1005.

Dated: June 6, 2021.

Respectfully submitted,

s/ B. H. Boucek
BRADEN H. BOUCEK

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I filed the documents on the Court's electronic filing system. I further certify that I served the following persons in the manner indicated below.

Counsel	Via
Emily Newton U.S. Department of Justice 20 Massachusetts Ave. NW Washington, DC 20530 202/305-8356 Fax: 202/616-8470 Email: emily.s.newton@usdoj.gov	<input type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> FedEx <input checked="" type="checkbox"/> Efile
Kyla Snow DOJ-Civ Federal Programs Branch 1100 L. St. NW Washington, DC 20005 202/514-3259 Email: kyla.snow@usdoj.gov	
Joseph Murphy United States Attorney – Western District of Tennessee 167 N. Main Street, Suite 800 Memphis, TN 38103 901/544-4231 Fax: 901/544-4230 Email: Joe.murphy@usdoj.gov	

Dated: June 6, 2021.

Respectfully submitted,

s/ B. H. Boucek
BRADEN H. BOUCEK